

CCDAMINI SUPREME COURT - STATE OF NEW YORK DATE: 11/28/2007
INDEX NO: 400650 2007 NEW YORK COUNTY CLERK TIME: 10:40:51
PURCHASE: 02282007 CIVIL INDEX MINUTE BOOK INQUIRY

PLAINTIFF NAME: FAUNTLEROY KAREEM DEFENDANT NAME: ONE POLICE PLAZA
ATTORNEY: UNKNOWN ATTORNEY: UNKNOWN

SEQ DATE MINUTES
0001 02282007 VERIFIED PETITION
POOR PERSON'S ORDER

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: SPECIAL TERMS

IN THE MATTER OF THE APPLICATION OF
KAREEM FAUNTLEROY 96A6869

07400650

Petitioner, please.

For A Judgment under Article 78 of
THE CIVIL Practice Law and Rules

VERIFIED
PETITION

RJT# _____

Index No. _____

— against —

One Police Plaza New York City, FOIL
Record Access Officer Hippolyte, Record Access
Officer James Russo, Record Access Appeals
Officer Jonathan David, Corporation Counsel,

Respondents.

FILED

FEB 28 2007

NEW YORK
COUNTY CLERK

TO THE SUPREME COURT OF THE STATE
OF NEW YORK for the County of New York:

The Petition of KAREEM FAUNTLEROY complain of Respondents, respectfully alleges and show that:

1) This is a special proceeding brought pursuant to Article 78 of the Civil Practice.

2) Petitioner, KAREEM FAUNTLEROY is currently incarcerated in the Shawangunk Correctional Facility serving consecutive sentences of twenty-five years to life a total of fifty year to life imprisonment. Said sentences were imposed after separate jury trials upon which Petitioner was convicted of Homicide in the Second degree, and Robbery in the first degree. Cf. Weapon an 2nd & 3rd Degrees. Petitioner was tried under indictment number 9504/95 up in King's County.

3) Petitioner commences this action with regard to indictment number 9504/95. The City of New York, Communication Bureau's, record Access officer assign, Hippolyte, or and Mr. James Russo, to petitioner (F.O.I.L. Documents request;

4) Pursuant To CPLR section 7804 and 506 (B) or some section, Venue of this proceeding is in the County of New York, City of New York, where respondents conduct their daily and general business, and where respondents main offices are located, and no final determination was made on petitioner (FOIL) request, petitioner is now submitting an Article 78.

5) This petitioner challenges the none decision made on the F.O.I.L request see exhibit "A" dated

(20-8)

June 27, 2006, by respondents Hippolyte, also Jame Russo, also see exhibit "B", in their Capacity as (FOI Record Access officers (RAO), Also the none final determination made on petitioner F.O.I.L. request see exhibit's A, B, C, D.

Also, an appeal letters was sent to the (FOIL Appeals person (twice), at One Police Plaza, New York, New York, Mr Jonathan David, and he also failed to make a final determination on petitioner (FOIL) request, ~~Dated~~ Appeal, December 8, 2006, and January 2, 2007 (see exhibit's "C, D"). There was no acknowledgment of my (FOIL) Appeals letters petitioner sent to him, within ten business day by Mr. Jonathan David, which establish on constructive denial and all avenue is exhausted, also which

respectively establish a denial to petitioner Access to the requested (F.O.I.A) - Witnesses [A] - promise of Leniency, or deals made in exchange for co-operation

[B] Prior and present Criminal history (Rap sheets) & Law enforcement officials [A] Police notes, reports and documents prepared by the district Attorney assign and assistance of prosecutor the above case. [C] Dates and contents of plea agreements communicated to defense counsel, and also District Attorney, of the persons who are witnesses in petitioner Criminal Trial (see Attach exhibits "F", "G", Mr. Mickey Mayo and Mr. George Allen). Petitioner claim is he has the right to the herein mention FOIA requested records, documents which clearly fall under the Public record doctrine. Petition also has a right to

the document as an interested Party.

6) Upon information and belief, possible deals were made, between the herein-mention witnesses, and members of the Prosecutorial staff, regarding related and unrelated pending case, which petitioner, Trial counsel, nor the jury were aware of during the pretrial or Trial.

Parties

7) The Petitioner KAREEM FAUNTLEROY, is an inmate presently serving a total of fifty years to life of imprisonment in the state of New York as such, is in the care and custody of the New York State department of Correctional Service (hereinafter referred to as (DOC). Petitioner is presently held at Shawangunk Correctional Facility, Post Office Box 700, Wallkill, N.Y. 12589 Located in ULSTER County.

8. Upon information and belief respondents Mr. Hippo and or James Russo, is the (F.O.I.L) record Access officers (Hereinafter referred to as (RAO), for the City of New York. In that capacity, they represent One Police Plaze in the City of New York, and never answers Petitioner's (F.O.I.L) request (see Attach A, B, C, D), Specially everything requested for in my (F.O.I.L) request Contain to Mr. Mickey Mayo and Mr. Georg Allen, no final determination was made.

9) Also an appeal letter was sent to the (F.O.I.L) Appeals officer person (twice), at One Police Plaze, Mr Jonathan David in New York County, City of New York, informing him of the (F.O.I.L) Access officers Mr. Hippolyte, James Russo, none final determination on the petitioner (F.O.I.L) request.

Also, the (F.O.I.L.) Appeals officers Mr. Jonathan David, failed to answer petitioner Appeal letters sent to him (see Attach exhibit's "C, D"), which he did not acknowledge my F.O.I.L. Appeal "within ten business days," which also establish an constructive denial, thus all avenue are considered exhausted (see exhibit "E").

10) The Petitioner did not recieved a final decision "NOTICE FROM NO REpondents" on the (F.O.I.L.) request the petitioner submitted, Hippolyte, Mr Jame Russo Record Access officers, and (F.O.I.L.) Appeals officer (FAC Mr. Jonathan David. A Appeal letter was dated and sent out on December 8, 2006 and January 2, 2007. I have (4) Four - months - 120 days to file a Article 78, this clearly within that time frame.

Discussion

Respondents, Hippolyte, Jonathan David did not make a final determination, he/they did not satisfy the requirement to delineate the exemptions claimed under existing law, no decision was never submitted.

Petitioner (F.O.I.A) request, "states" specifically indicated herein request the following production of any and all records or information generated, prepared, communicated, sent or received relating to "Mr. Mickey Mayo" and "Mr. George Allen" within the jurisdiction of Kings County.

"Mr. Mickey Mayo and "Mr. George Allen", testify on the prosecutor's behalf by obtaining a Co-operation agreement, "Between August 2, 1995 and October

15, 1996"

1. Witnesses 1. [A] Promise of leniency or deals made in exchange for co-operation. [B] Prior and present Criminal history "Rap sheets" [2] - Law enforcement officials: [A] Police notes, Reports and documents Prepared by the district Attorney assigned and assistance to prosecutor the above case. [C] Dates and content of plea agreements communicated to defense Counsel, and also District Attorney (see Attach Exhibit "A")

Mr Hippolyte, and Mr. James Russo Record Access officers never stated no exemptions to my F.O.I. L claim, because they never answered my (FOIL) request, that also establish a constitute denial to Petitioners F.O.I.L. request (see exhibit "E") which they concede to my F.O.I.L request.

(27-G)

Agreements between intra-agencies and their policies cannot be binding, if those agreements are indirect contraposition with existing statutory laws. Legislatively Mandated Laws can not be so summarily dismissed, based upon administrative agreements. The documents requested by Petitioner fall within (F.O.I.L) guidelines and clearly fall outside its mandated exemptions.

An agency may not simply withhold any information it please it is required to articulate particularized and specific justification and, if necessary, submit the requested material to the court for in-camera inspection, to exempt its records from disclosure" Matter of Fink v Leftkowitz, 47 N.Y.2d 567 (1979).

There is no justification for remittal for in-camera inspection. The Respondents resisting disclosure made no request for such inspection. The record contains

no predicate on which an application therefore might have been based. Church of Scientology of New York v State Supra, 46 N.Y.2d 906 (1979)

Petitioner is not requesting medical records, credit histories, personnel records, or address listing, Law enforcement investigation procedure or results, confidential informants records. None of the guidelines therein as mandated, preclude petitioner access to the material sought.

The witnesses testified in out court, there confidentiality agreements have lost their cloak and are available for inspection by a member of the public, see Moore v Santucco, 151 A.D.2d 677 (2nd Dept 1989); Werfel v Fitzgerald, 23 A.D.2d 306 (2nd dept 1965); also see Thompson v Weinsten, 150 A.D.2d 782 (2nd dept 1989); Wood v Kings County District Attorney's off 651 NYS2d 595 (2nd Dept 1996); petitioner was entitled to these documents at trial, therefore,

(29-G)

he is entitled to said information upon appropriate fees. (Billups v Santucci, 151 A.D. 2d 663 (2d dept 1989)) without regard to status, need good faith or purpose requesting access. Moore v. Santucci *supra*; Brownell v Grad, 147 Misc. 2d 105 (Sup. Ct Dutchess Co, 1990)

The U.S. Supreme Court has enunciated the Principle that: "What transpired in the Court room is public property." Craig v Harney, 67 S. Ct 1249, 1254 (1947). See, Cox Broadcasting Corporation v Cohn, 95 S. Ct 1029 (1975).

FOI/LS mandate of open disclosure require that agency's public records remain as available to its litigation adversary as to any person. McKinney's Public Office Law, Section 84 et seq, and CPLR, Section 3010 et seq.

Also, there was an appeal letter sent to

the F.O.I.L. Appeal officer, Mr Jonathan David
 Dated on December 8, 2006 and January 2, 2007,
 from the petitioner see exhibit "C,D", and he failed
 to respond, which establish a constructive denial.

Where, the acknowledgment of a F.O.I.L. Appeal
 must be provided "within ten business days of it
 receipt" otherwise, failure to comply will be considered
 an constructive denial, thus all Avenues are considers
 exhausted see Floyd v. McGuire, 452 N.Y.S.2d 416. Also,
 (See Attach exhibit "E")

Under the freedom of information Law (F.O.I.L),
 any persons may request and receive documents kept,
 held, filed by a government agency in any physical
 form whatsoever, see case cite, 760 N.Y.S.2d 431, Quote:

513 N.Y.S.2d 367. The petitioner is entitled to
 all the (requested F.O.I.L) under public office Law 84 et seq

(31-Q)

WHERE, PRAYS For an order voiding the none
determination by All respondents; and directing the
disclosure of the F.O.I.L. requested documents, records
to the petitioner and granting such other and
further relief as the court may deem just
and proper.

Sworn to before this
23RD day of ~~January~~ 2007

Peter M. Horan
NOTARY Public

PETER M. HORAN
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN DUTCHES COUNTY
NO. 01HO6020523
COMMISSION EXPIRES FEB. 13, 2010

Kathy 9/6/2009
St. Augustine Cathedral Tre.
P.O. Box 700
WALKILL, N.Y. 12859

KAREEM FAUNTHERY

Plaintiff

against

One Police Plaza New York City F.O.I.L.

James Russo and Jonathan David

Defendant

STATE OF NEW YORK)

COUNTY OF Ulster) SS.:

I, KAREEM FAUNTHERY, being duly sworn, depose and say that I am the
in the within action for Article 78; I have read the foregoing
Complaint and know the contents thereof, the contents of the Complaint are true to my knowledge, except
as to those matters therein stated to be alleged upon information and belief, and as to those matters, I
believe them to be true. To the best of my knowledge, information and belief, formed after an inquiry
reasonable under the circumstances, the presentation of the paper or the contentions therein are not
frivolous as defined in subsection (c) of section 130-1.1.

La. Tally

Subscribed and sworn to before me
on 2-22-07

Frances Woodruff

Notary Public
My commission expires on

FRANCES WOODRUFF
Notary Public in the State of New York
Qualified in Ulster County No. 4953152
My Commission Expires July 2007

L7293

SVCRNDCC

1. Sir/Madam:

Please take notice that the within is a (certified) true copy of a

_____ duly entered in the office of the clerk of the
within named court on _____, 199__.

Dated:

Yours, etc.

Attorney for

Office and Post Office Address

To

Attorney(s) for

INDEX NO.
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Kareem Fauntleroy

Deputy/Petitioner

One Police Plaza, New York City
F.O.I.Z. Record Access Office 4 Sperry St.
Record Access Officer James Lester
Access Appeal Officer Jonathan David

~~Post Person~~ ORDER to show cause

***** NOTICE OF SETTLEMENT *****

Sir/Madam:

Please take notice that an order

of which the within is a true copy will be presented for settlement to
the Hon. _____ one of the justices of the within

named court, at _____

on _____, 199__ at _____ M.

Dated:

Yours, etc.

Attorney for

Office and Post Office Address

To

Attorney(s) for

Telephone No.:

Name: Kareem

Address: Fauntleroy, 496 E. 68th St., P.O. Box 700, Wallkill, NY 12589

Service of a copy of the within

is hereby admitted.

Dated:

Attorney for